IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3233 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHMADSAFI JANMAHMAD MEMON NEAR GHANCHIVAD MAZJID - Petitioner(s)

Versus

BANK OF INDIA, GENERAL MANAGER, PERSONNEL DEPARTMENT & 4 - Respondent(s)

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Appearance :

MR NILESH A PANDYA for Petitioner(s) : 1,
NANAVATI ASSOCIATES for Respondent(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 15/11/2005

ORAL JUDGMENT

1.0 The petitioner has prayed to direct the respondent authorities to regularize the services of the

petitioner on the post of Sepoy from the date of his first appointment as badli Sepoy in the year 1983 and to give all consequential benefits flowing from the same together with continuity of service and other benefits.

2.0 The brief facts of the case are that in the year 1983 the petitioner was selected and empanelled as a badli Sepoy at the Kalol Branch of the respondent Bank. In the year 1986, the petitioner was discontinued from the said post. Being aggrieved by the said action of the respondent Bank, the petitioner raised a dispute by way of a representation before the Assistant Labour Commissioner, Ahmedabad.

2.1 On the said representation the Assistant Labour Commissioner, Ahmedabad, directed the respondent Bank to continue the petitioner as a badli Sepoy w.e.f 03.10.1988. Having come to the knowledge that juniors to him have been regularised as Sepoys, the petitioner again approached the Assistant Labour Commissioner, Ahmedabad, against the unfair labour practices adopted by the respondent Bank.

2.2 Respondent Bank vide reply dated 15.07.1998

informed the Assistant Labour Commissioner that as and when approval from its Head Office is received, the petitioner would be regularised in service. However, the services of the petitioner have not been regularised till date. Hence, this petition.

3.0 Mr. N.A. Pandya learned advocate for the petitioner has submitted that the petitioner has been continuously working as a badli Sepoy since 03.10.1988 without any break in service pursuant to the direction issued by the Assistant Labour Commissioner, Ahmedabad. Learned advocate has submitted that before the Assistant Labour Commissioner, the respondent Bank had filed its reply dated 15.07.1998, wherein it was stated that as and when permission was obtained from the Head Office to fill in the vacancies of the Subordinate Staff, the case of the petitioner would be considered. However, the services of the petitioner has not been regularised.

3.1 Learned advocate has further contended that after the filing of the said reply dated 15.07.1998 before the Assistant Labour Commissioner, Ahmedabad, approximately twenty Posts of Sepoys have fallen vacant on account of promotions, retirement and death of certain

employees of the respondent Bank. However, the respondent Bank has not taken any steps to regularise the services of the petitioner in spite of the fact that assurance was given before the Assistant Labour Commissioner that the services of the petitioner would be regularised.

3.2 Learned advocate has further contended that juniors to the petitioner have been regularised in service though the petitioner had put in more than twenty years of service as badli Sepoy. He has, therefore, submitted that the action of the respondent Bank in not regularising the services of the petitioner is discriminatory and violative of the provisions of Articles 14 and 16 of the Constitution of India.

4.0 Affidavit in reply has been filed on behalf of the respondent Bank. Learned advocate appearing on behalf of the respondent Bank has submitted that the petitioner was empanelled as a badli Sepoy in the year 1988 by the Kalol Branch of the respondent Bank and that his services were utilized on daily wage basis as and when any regular Sepoy was on leave. Learned advocate has further contended that the issues involved in the present petition amount to an industrial dispute for which the

provisions of the Industrial Disputes Act, 1947 would be applicable and not the present petition. It has been further contended that the petitioner was transferred to the Ahmedabad Branch of the respondent Bank at his own request, and therefore, the seniority of the petitioner would be considered on the basis of other badli Sepoys in the Ahmedabad Branch of the respondent Bank and not on the basis of the list of the Kalol Branch. Therefore, the petitioner is not entitled for regularisation of his services.

5.0 Heard learned counsel for the parties and perused the documents placed on record. Pursuant to the directions issued by the Assistant Labour Commissioner, Ahmedabad, the petitioner was continued as a badli Sepoy in the respondent Bank w.e.f. 03.10.1988 on the panel of badli Sepoys at Ahmedabad. From the document placed at Annexure – I to the petition, it appears that the petitioner herein is the only badli Sepoy on the panel of badli Sepoys at Ahmedabad. Since the petitioner is the only badli Sepoy on the panel of badli Sepoys at Ahmedabad and has also put in more than twenty years of continuous service, I am of the view that the petitioner is entitled for regularisation of his services on the

said post.

5.1 Moreover, from the document placed at Annexure J to the petition, it transpires the respondent Bank has taken a policy decision wherein it has been agreed that while filling up the posts of subordinate staff approved by the Reserve Bank of India, part-time sweepers and badlis who have completed 240 days of service in a block of twelve months would be given preference and that only as a last resort staff would be recruited from the market. In the present case, the petitioner has been working as a badli sepoy and has also rendered more than twenty years of continuous service with the respondent Bank. Thus, looking to the factual situation, it has to be concluded that the petitioner is entitled for regularization of his services.

6.0 In above view of the matter, the petition is allowed. The respondent Bank is directed to regularize the services of the petitioner on the Post of Sepoy from the date of the reference of the Assistant Labour Commissioner, Ahmedabad, with all benefits of his service with the respondent since the petitioner has rendered more than two decades of service. While regularising the

services of the petitioner, the respondent Bank shall also take into consideration the past services of the petitioner rendered pursuant to the order of the earlier authority. The respondent Bank is directed to implement the aforesaid directions of this Court within a period of eight weeks from the receipt of writ of this order. It is made clear that the Court has passed this order looking to the peculiar facts and circumstances of the case and it may not be treated as a precedent in future cases. The petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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